ART. III.—1. *On Liberty.* By JOHN STUART MILL. Second Edition. London. 1859.

2. *Prohibition of the Sale of Intoxicating Liquors impracticable; the Maine Law a Failure; a stringent License Law the true Policy.* By B. F. CLARK, North Chelmsford, Mass. Lowell. 1864. pp. 48.

A MORE exact determination of the sphere and duties of government may justly be held as one of the happiest results of modern investigation in ethical science; but the relations between the government and the individual are still often grossly misconceived. Few men, whether in the legislature or out of it, have ever formed to themselves a clear conception of the proper limits of the law-making power. Most persons, if definitely questioned about it, would probably confess that they had never thought of any limits but those imposed by the constitution, or by public opinion, or by defect of opportunity. There is a vague notion, we fear, that the majority has a natural right to frame any laws which are only not unconstitutional. Especially, if some moral and social evil presses heavily upon the community, and cannot readily be removed by ordinary methods, there are many well-meaning persons who will insist that the law should take such cases in hand. Individual liberty is to them as nothing when it seems to stand in the way of the public good. The short argument of such persons is, that, because it is desirable to get rid of the evil, therefore the most speedy and summary measures to effect this object are justifiable. What measures *are* most speedy and summary, a numerical majority is of course to decide.

The attempts which have been made by various nations, in various stages of civilization, to regulate the expenses of their citizens on dress, food, furniture, or the like, furnish instructive illustrations of the folly and injustice of seeking to do by legislation what belongs properly to an entirely different department of human energy. Sumptuary laws are instances of legislative departure from the proper province of government. Yet, both in antiquity and in modern times, sumptuary laws have been regarded as falling within the rightful scope of legis-

lation, and as not only justified, but demanded, by a due concern for the moral welfare of the people.

Sumptuary laws are laws regulating private expense. They proceed on the assumption that the government has a right to check extravagance and restrain luxury, even by direct interference with purely personal and household economy. They profess, indeed, to have an eye to the public good in this interference. Luxury in individuals is presumed to be a corruption of the state, and, as such, to need and authorize the correcting hand of the state. Now we cannot and need not deny, that individual extravagance and waste are an injury to the community. They waste the products of labor. They enervate character, and thus make men less fit to discharge their duties to the public. They divert others, according to the degree of the individual influence, from the highest and purest aims in life. And they deprive the poor of the assistance which a proper economy would have secured them. But do these and many other obvious evils justify the intervention of law? There are still some important previous questions to be entertained. Is it in the power of legal enactments to abolish these evils? Can this power be exercised without causing more harm than good? What *right* has the government to lay its hand upon matters of private concernment and conscience? The spirit of personal liberty protests against such invasions of private life. Sumptuary laws and all their kindred are repugnant to the spirit of this age; because we hold personal liberty too sacred to be lightly infringed, even for the largest alleged benefit to the state. It was not always so; and the notions of antiquity concerning sumptuary laws were based on the assumption, that the good of the state is not only of supreme importance, but may be secured at the cost of the liberties of the individual.

It is of no importance to discuss here the date of the laws of Lycurgus. We may be content with an obscurity which Plutarch frankly confessed he could not clear up. It is enough that, at a period not later than seven hundred years before the Christian era, we find this name in connection with certain radical changes introduced into the laws and usages of Sparta. Moreover, whatever else may be uncertain respecting the con-

stitution of Sparta, there can be no reasonable doubt that history has correctly given us the main features of the code of social observances, discipline, and education attributed to Lycurgus. The extraordinary permanence of the Spartan discipline and manners would, of itself, entitle them to our careful study. A constitution that could maintain itself essentially the same for five centuries must have had no common degree of vitality, and no common adaptation to the ends proposed.

The immediate end which Lycurgus seems to have had in view was the removal of factions, disorders, and oppressions, and the establishment of a true national unity. The state seemed likely to become an easy prey to its more powerful neighbors; and to prevent such a calamity, as well as to unite the whole body of the citizens in one common object, the Spartans must become a nation of soldiers. War was to be the noblest of trades, the most necessary of all arts. Whatever natural instincts, or private tastes, or domestic affections, stood in the way of this paramount object, must be trampled down without mercy. Spartan institutions combined the rigor of the camp and the convent. All the citizens must take their meals at a public table, not even the kings being exempted; and every one contributed an equal share to the common provision. This effectually abolished the distinction between rich and poor. And, to suppress all luxurious tastes, the fare was of the coarsest and plainest description. Its nature was illustrated by the Athenian witticism about the famous "black broth" of Sparta, — that it was no wonder, if they had to live upon this, that the Spartans were so ready to die. But not only was no encouragement given to the pleasures of the palate; all adornment of their dwellings was forbidden by the same inexorable law. No foreign luxuries of any kind might be introduced; no foreign artisans might exercise their calling in Laconia; no foreign ship might come to its ports. Indeed, the exclusion of gold and silver coinage, and the substitution of iron, must have operated as a pretty effectual bar to all commerce from abroad. The proverbial Spartan courage and fortitude were the direct fruits of their training from infancy. No weakly children were permitted to live, and both girls and boys were subjected to a thorough course of physical

education under the public oversight. Mothers gloried in having given birth to heroes, and the happiest were those who had given the most sons to die for their country. "After the fatal day of Leuctra, those mothers whose sons had fallen returned thanks to the gods; while those were the bitter sufferers whose sons had survived that disgraceful day." Together with the other arts which refine human life, literature was in small repute in Laconia. The Spartans had no authors, and rhetoric and oratory they despised. Some few poems — those of Homer and Tyrtæus especially — were admired by them, as tending to promote a martial spirit. But they had no patience with prolonged discourses, and studied that brevity of speech which to this day we designate as Laconic.

Certainly we cannot withhold from Lycurgus the praise of having accomplished, far beyond most lawgivers, the great purposes of his system. It placed Sparta in the first rank of the states of the Peloponnesus, and made her martial prowess renowned for centuries. Not only the manners, but the whole temper and spirit of the people, seem to have been radically and permanently changed by this extraordinary legislation. Never before or since, so far as we know, have sumptuary laws been so faithfully carried out; never have they so fully effected their object. Luxury absolutely ceased to exist in Laconia, because there was nothing to sustain it. But before we bestow unqualified praise upon this system, we must ascertain whether it did not cost too much. The constitution of Sparta was enforced at the cost of all personal freedom. The will of the individual was in absolute subjection to the authority of the state, not only in public but in private affairs. Xenophon exhibits the ancient notion of virtue, when he affirms that Sparta "alone, of all governments, had regard to the virtue of her people." Schiller more truly says: "The first condition of the moral beauty of actions is freedom of the will; and this freedom is gone as soon as it is attempted to enforce moral virtue by legal punishments." It is, indeed, impossible to overrate the greatness of the evil which must have existed in Sparta, by reason of the prohibition of all free and independent choice. What room for moral education, where obedience was the prime virtue, and conformity the great law? "To choose one's

own destiny," as Schiller says again, "is the noblest prerogative of human nature." In Sparta each man's destiny was chosen for him by the state. He could not follow the bent of his own mind, unless that happened to accord with the public necessity. The Spartan must be a soldier, — nothing less. As a soldier, his chief merit was obedience. It was the glory of Leonidas and his immortal three hundred that they "died in obedience to the laws." It is true that obedience is not less a Christian than a Spartan virtue; but its sole value in Christian ethics is its voluntary character, while to Sparta it mattered little whether it were a thing of choice or of compulsion. Willingly or unwillingly, soldiers could be made to serve their country; and when that end was attained, the means need not be scrupulously examined. This subordination of the individual to the general good was indeed the radical vice of ancient politics, as we have already said. But nowhere else perhaps, in antiquity, have we so striking an example of this vice as in Sparta, where the sole end of every law and institution seemed to be to impress it upon each man that he was nothing except as part of the state.

The system of Lycurgus had a direct tendency to the suppression of domestic life and domestic virtues. No part of it is more revolting to our Christian notions than this. It is something truly astounding, and that which more than anything else gives an appearance of myth and unreality to these alleged institutions of Lycurgus, that it should have been possible to crush those sacred and universal instincts which originate and sustain the family. Under all religions, under all skies, men have maintained a certain reverence for this primitive institution. The dependence of children on their parents, the duty and privilege of parents to educate their children, seem to be so founded in natural reason and necessity that we can hardly imagine the boldness which should dare to ignore it all, or the submissiveness with which the people allowed, not only their children to be taken from them, but their wives to become almost strangers to their society. Yet we are compelled to admit these things as facts no less authenticated than the other parts of the constitution of Lycurgus. And, abhorrent as they are to all our ways of thinking, we see, nevertheless, that they were essential to the success of this constitution.

That wealth and foreign commerce and the fine arts are always and everywhere dangerous to the manliness and courage of a people, seems to have been the undisputed maxim of Lacedæmon, as of so many puritans and iconoclasts the world over. Yet the Athenians might have taught the Lacedæmonians that there is no necessary connection between refinement and cowardice. The citizens of that "fierce democratie," though they loved fine clothes and sumptuous fare, and gloried in their poets, orators, and artists, were able to make, not only the hordes of Xerxes, but even the Spartans themselves, tremble before them. The age of Pericles, renowned above all others for progress in arts, certainly witnessed no marked decline in arms. But there can be no need to cite frequent examples from history to show that courage and culture are not incompatible. Luxury indeed tends to enervate; but luxury is far from being a measure of culture and refinement. On the contrary, the luxurious spirit has hardly been more corrupting to morals than to taste. But the puritanical temper forgets that there is danger on the other side too, — danger from rudeness and hardness, not less than from the tendency to sensualism; and that danger, moreover, is the element in which all noble characters are to be matured. One of the last moralists to be suspected of any effeminacy either in life or doctrine, Fichte, says: "Æsthetic feeling (*Sinn*) is not virtue, — but it is a preparation for virtue. It makes the soil ready; and when morality comes in, it finds half the work, namely, emancipation from the bonds of sense, already accomplished." (*Sittenlehre*, § 31.) Somewhat in the same spirit, perhaps, Burke declared that to take from vice all its coarseness was to take away half its evil. We have indeed too many unconscious followers of Rousseau, who, in their revolt against an extremely artificial and corrupt society, would advocate a return to the "simplicity of Nature." To them the Spartan system would be always admirable, because it made short work with all the possibilities of luxury and effeminacy, heedless of the wrong it also inflicted upon some of the nobler aspirations of the soul. Common sense suggests that it were advisable first to ask whether we are compelled to choose between the savage and the fop, or even between an Agis

and a Vitellius. And as it is certain that no such alternative is forced upon us, so too we may find that all which is most admirable in the primitive simplicity of an heroic age is quite capable of being reproduced in a modern and highly cultivated state of society. What need to offer proof of this to a generation that has witnessed the heroisms of our own civil war? How manifest have been the manliness, the courage, the cheerful endurance, nay, even the physical stamina and persistency, of those who left all the comforts, refinements, and luxuries of an attractive home because their country called them to her defence! It is invidious to give credit to one class more than another for their services to the Union. But the record amply sustains us in ascribing no inferior position to the soldiers who came from the more educated portion of society, and many of whom had been daintily, and even sumptuously, brought up. They were not Spartans in early training or experience; war seemed utterly foreign to all their tastes, and even to their principles, and yet the great emergency showed them worthy to rank with Sparta's bravest and best.

Leaving now the little oligarchy by the banks of the Eurotas, we turn to the sumptuary laws of the great commonwealth, which from the Tiber extended its domain over the world. Rome seems no more than Sparta to have questioned the right of the state to restrain luxury by legal enactments; and never was a people who needed such restraint more than the Romans. Their luxury was of the coarsest kind. Nothing in the history of civilized nations can surpass the sensuality of Roman banquets under the Empire. Land and sea scarcely sufficed, says Sallust, to set out their tables. "Far-fetched" and "dear-bought" seem to have been peculiarly their measures of value, and not any special delicacy of the viands. Indeed, the Roman gluttons cared more for quantity than quality. We need not repeat the disgusting stories which have come down to us of their expedients to prolong the pleasures of the palate. Of their extravagance in providing for the table, it is enough to mention one instance, by no means exceptional, namely, that a single mullet (a favorite fish among the Romans), of the unusual weight of six pounds, was

sold for eighty dollars! And of the time consumed at meals we may form some idea when we read in the younger Pliny a eulogium of his uncle for his extraordinary "parsimonia temporis" in giving but three hours to his dinner. But the extravagance of those times was not confined to mere eating and drinking. In the adornment of their banquet-rooms they spent incredible sums, as well as upon furniture* generally, and upon dress and other personal ornaments. Cato called sumptuary laws "leges cibarias," because nearly all of them were enacted to restrain extravagance in food. But the earliest law of this kind on record (passed B. C. 215) was directed against extravagance in dress, enacting that no woman should own more than half an ounce of gold, or wear a dress of different colors, or ride in a carriage in the city, or in any town, or within a mile of it, unless on occasion of public sacrifices. This law was repealed twenty years afterwards; how long it had been a dead letter on the statute-book we have no means of knowing. The Lex Orchia which followed (B. C. 181) limited the number of guests at entertainments, but said nothing otherwise about the expense. But the Lex Fannia (B. C. 161) ordained that on certain festivals which are named the expense of an entertainment should not exceed one hundred *asses*, on ten other days in each month thirty *asses*, while on all other days not more than ten *asses* should be expended for this object. When we remember that the equivalents of these sums in our own currency would be about a dollar and a half, forty-five cents, and fifteen cents, respectively, we can only conclude that an extreme frugality must have prevailed at that date, even after making the due allowance for the much greater comparative value† of the same money two thousand years ago. Such frugal limits, however, are not long observed. The laws themselves were obliged continually to reduce their restrictions. More and more concessions were made to the growing taste for luxury,

* Even Cicero is reported to have given $ 10,000 for a single table of cedar.

† It is a vexed question among the political economists, how much gold has depreciated since the Christian era. Certainly we must assume a pretty large depreciation; in other words, a gold coin under Augustus would buy very much more than the same coin would buy now, — M. Say thinks, about three times as much.

with the vain hope of thus securing obedience to the law. Thus the Licinian Law — somewhat subsequent to the Lex Fannia — allowed two hundred *asses* (three dollars) to be spent on entertainments upon marriage days, retaining for other days the same directions as the preceding law. But the Julian law, proposed by Augustus, allowed an expenditure of two hundred *sesterces* (ten dollars) for festive entertainments on the "dies profesti," three hundred on the Calends, Nones, and Ides, and one thousand (or fifty dollars) upon marriage feasts. An edict either of Augustus or Tiberius went still further, making one hundred dollars the legal limit for the expense of an entertainment.

Julius Cæsar even endeavored to enforce the observance of sumptuary laws by violent measures. He stationed officers at the market to prevent the illegal sale of provisions, and even sent his soldiers and lictors to the banquets to seize everything contraband they might find there. But without his personal presence in Rome, these measures were ineffectual. A law proposed by one Antius Restio, in addition to a restriction upon extravagance at meals, enacted that no actual magistrate or magistrate elect should dine abroad, except at certain prescribed places. But Restio himself is said never to have dined out after the law was passed, lest he should be witness of its violation. The remark which Macrobius makes upon this law is probably applicable to most of the class: "Quam legem, quamvis esset optima, *obstinatio tamen luxuriæ et vitiorum firma concordia*, nullo abrogante, inritam fecit." Restio seems to have been an honest man; but what a farce must sumptuary restraints have appeared, when passed or proposed by men like Antonius the triumvir, or Tiberius, or Heliogabalus! What wonder that the principal citizens, as we are told, trampled upon them; or that, when, as in public repasts, they were obliged to conform to the letter of the law, they easily found ways to evade its spirit! *

* Cicero, in a letter to his friend Gallus, playfully describes an instance of this when invited to an "inaugural dinner," whence all the meats prohibited by law were strictly banished, but the permitted vegetables were so skilfully prepared, "ut nihil possit esse suavius"; and he is obliged to confess, "ita ego, qui me ostreis et murænis facile abstinebam, a beta et a malva deceptus sum."

The evil was undoubtedly fostered by the enormous fortunes which the wealthier classes had at their command. The famous Crassus is said to have had, in landed estates alone, besides a large number of houses in the city, a property of ten millions of dollars. Apicius, the noted epicure, owned five millions; and the augur Cn. Lentulus, under Augustus, not less than twenty millions. In the beginning of the fifth century, "many" families had an income of nearly a million from their real estate, and families of the second rank an income of from two hundred and fifty to four hundred thousand.* These figures, however, require to be largely multiplied to get at their real value. Contrasted with the very low price of the necessaries of life, they assume colossal proportions. A day-laborer in Cicero's time earned about sixpence a day; and, what seems hardly credible, Polybius tells us that a traveller's single entertainment at an Italian inn cost him, in his time (about 200 B. C.), but half a penny. What then must have been an income of a million a year, when it was possible to subsist on a penny a day! Truly it might be said that some private citizens of Rome had patrimonies like kingdoms. And if we may believe half the invectives of the satirists and historians, they did not fail to use their wealth so as to become kings in power. Could sumptuary laws have any chance of success in a system so venal? Yet the reformers, real or pretended, continually deluded themselves with the hope of stemming the tide of luxury by the barriers of law. The futility of these efforts confirms us in the belief, which has become almost a truism in our day, that, in the long run, no laws can be effectual which are not sustained by public opinion, least of all those which assume to supply the place of moral convictions and religious principle. We may not say that the fall of Rome was owing to her luxury, for there was undoubtedly a combination of many causes to bring about that overthrow. But we cannot regard these abortive attempts to check extravagance as anything more than indications how far the evil had gone.

* "I have seen," says the elder Pliny, "at a simple supper given in honor of a betrothal, Lollia Paulina (afterwards Empress) all resplendent with emeralds and pearls; her head, hair, throat, ears, neck, arms, and fingers were loaded with them. They were valued at forty millions of sesterces."

They do not even prove the virtue of those who were most strenuous that such laws should be enacted. It became the fashion for Romans to extol the frugality of their ancestors,— to extol, but unfortunately not to imitate. Seneca and others could discharge their consciences by the easy method of recommending poverty and sobriety, and did not confirm their words by example. Rome lived on her past glories. The simple reputation of the early Republic seemed almost sufficient, for many generations, to uphold the tottering magnificence of the Empire.

The third instance we propose to cite in the matter of sumptuary laws brings us nearer home. No misgiving seems to have disturbed the venerable founders of our Commonwealth that they were meddling with what did not belong to them, in legislating against luxury and extravagance. "The right to control the individual," says our latest and best historian, "not only for his neighbor's protection but for his own improvement, was law after the universal traditions of Christendom."* Such a right was least of all likely to be questioned by our Puritan fathers, who held themselves sacredly bound to carry out their ideas of a Christian state in the smallest as well as the greatest things. They were, in their own eyes, the constituted guardians of the purity of Christian faith and morals in the new Colony; and they made it a matter of conscience alike to prohibit the wearing of "bone-lace," and to drive out from their boundaries such pestilent heretics as Quakers and Anabaptists. To them this legislation was no usurpation, and intolerance was rather a virtue than a vice. In fact, their great mistake may be said to have been, that they made no distinction between a sin and a crime. An offence against the laws of God was for that reason an offence against the laws of man. It was a crime to disregard the Sabbath in any way, to deny the authority of any part of Scripture, to call in question the truth of Christianity, or even to dispute the doctrine of the Trinity. What wonder, then, that with these notions of the province of legislation they proceeded early to enact many laws against sumptuous food and drink and costly apparel.

* Palfrey's History of New England, Vol. II. p. 34.

Not merely moral but prudential reasons moved them thereto. They could appreciate the evil of waste in a country hardly reclaimed from the wilderness, and where the utmost frugality and diligence sometimes barely sufficed to procure a living. This appears very curiously in the preambles to some of their laws, in which economy and morality are strangely blended. Thus, in the Records of the Colony for September, 1639, it is written: "Forasmuch as it is evident unto this Court that the common custom of drinking one to another is a mere useless ceremony, and draweth on that abominable practice of drinking healths, and is also an occasion of *much waste of the good creatures*, and of many other sins," &c. And the statute goes on to declare that such things are especially a reproach to a Christian commonwealth, "wherein the least known evils are not to be tolerated." Not to tolerate an evil was equivalent, with these legislators, to passing laws for its suppression, — a confusion of thought unfortunately not confined to them. It would seem to be almost a chronic delusion with a certain class of reformers, that whatever is morally injurious to any community may justly be removed by any process which promises to be the most expeditious and summary. But to say that even "the least known evils are not to be *tolerated*" in a Christian society, gives one a singular view of the Christian ideas of our Puritan ancestors. It certainly confirms what is so often said of their whole system of government, that it was constructed rather after the Jewish than the Christian pattern. To us it seems but the dictate of common charity to "tolerate" a great many social wrongs, a great many usages, which are manifestly corrupt, *until* they can be abolished without committing some other wrong. To our fathers — and to some of their sons likewise — it seems not to have occurred, that it would be possible to commit any wrong in the endeavor to carry out their ideas of right.

The three articles most obnoxious to early sumptuary legislators in Massachusetts appear to have been tobacco, dress, and intoxicating drinks. In the instructions of the Massachusetts Company to Endicott and his Council, the trade in tobacco is only allowed to the "*old* planters," "if they con-

ceive that they cannot otherwise provide for their livelihood." It is left to the discretion of Endicott and his Council "to give way for the present to their planting of it, in such manner and with such restrictions" as they may think fitting. "But," it is added, "we absolutely forbid the sale of it or the use of it by any of our own or particular (private) men's servants, unless upon urgent occasion, for the benefit of health, and *taken privately*." In the Records of the Colony of Massachusetts for September 3, 1634, "it is ordered that victuallers or keepers of an ordinary shall not suffer any tobacco to be taken into their houses, under penalty of 5*s.* for every offence to be paid by the victualler, and 12*d.* by the party that takes it." "Further it is ordered that no person shall take tobacco publicly under the penalty of 2*s.* 6*d.*, nor privately in his own house or in the house of another *before strangers*, and that two or more shall not take it *together* anywhere, under the aforesaid penalty for every offence." The words we have italicized in the above extracts indicate a curious view of morality among our Colonial legislators, and one which, we are sorry to say, does not exalt them in our esteem. It was wrong to do before others what it was not wrong to do in secret! Fichte has truly remarked, that all lying comes from some form of oppression. Deceit is the solitary weapon of the slave; and when a whole people have been in bondage for generations to an oppressive rule of public opinion or of law, the inevitable result is, that those who wish to maintain a respectable character, or who shrink from open violation of the statutes, are driven to do in secret what they unconsciously, perhaps, feel that no man had a right to prohibit to them; and yet every such secret indulgence, even in things innocent, is likely to detract from self-respect, and therefore to become a serious injury to the moral nature.

The laws which our Colonial fathers enacted against "excess and bravery in apparel" are fitted to excite a smile. But there is something more than ludicrous in the aspect of grave lawmakers passing judgment on all the minutiæ of dress, and finding matter of offence in an extra "slash," or a needless garniture of "lace." Against this last-named article the zeal of our fathers seems to have been especially stirred up. In

1634 it was ordered "that no person, either man or woman, shall hereafter make or buy any apparel, either woollen, silk, or linen, with any lace on it, silver, gold, silk, or thread, under the penalty of forfeiture of such clothes." In 1636 it was enacted "that no person, after one month, shall make or sell any bone-lace or other lace, to be worn upon any garment or linen, upon pain of 5*s*. the yard for every yard of such lace so made, or sold, or set on; neither shall any tailor set any lace upon any garment, upon pain of 10*s*. for every offence, — provided that binding or small edging laces may be used upon garments or linen." Again, three years later, a new edict was launched at this obnoxious material, because "there is much complaint of the excessive wearing of lace and other superfluities, tending to little use or benefit, but to the nourishing of pride and the exhausting of men's estates, and also of evil example to others." The law of 1634 was indeed repealed in 1644; but in 1651 the Court, to their great grief, are compelled to try their hand at the work again, though frankly confessing the impotence of all previous legislation, and evidently awaking to a sense of the inherent difficulties of the subject. "We acknowledge it," say they, "to be a matter of much difficulty, in regard of the blindness of men's minds and the stubbornness of their wills, to set down exact rules to confine all sorts of persons"; — and so, leaving the wealthier class to their own conscience or fancy, they undertake to prescribe for "people of mean condition." It was therefore ordered (in 1651) that no one whose estate is not of the value of £200 "shall wear any gold or silver lace, or gold or silver buttons, or any bone-lace above 2*s*. per yard, or silk hoods or scarfs"; and moreover, the selectmen of the town are required to fine anybody whom "they shall judge to exceed their rank and ability in the costliness or fashion of their apparel, *in any respect*"! And finally, a law passed in 1662 forbids "children and servants" to wear any apparel "exceeding the quality and condition of their persons or estate," "the grand jury and county court of the shire" being judges of the offence.

This does not look very much like democratic equality or the Declaration of Independence. Evidently our fathers

had not left behind them as obsolete all distinctions of social rank. Indeed, some of the usages and laws of the Colonial times would lead one to infer the existence of as decided a feeling for aristocracy as had ever prevailed in the mother country. Our fathers were probably quite as desirous to "re-enact natural justice" in their laws as any of their descendants can be. But, starting with false notions of the rights and obligations of civil government, and holding individual liberty of small account when set against the apparent necessities of the public welfare, they easily persuaded themselves that they should be false to their duty as magistrates not to correct extravagance in those who would suffer most by it; nor does it seem to have occurred to them, in their zeal for this end, that "£200" was not a natural demarcation between those who had and those who had not a right to spend as they pleased. One provision of the law of 1634 against "new and immodest fashions" is too remarkable to be omitted. It reads as follows: "Moreover, it is agreed, if *any* man shall judge the wearing of any the forenamed particulars, new fashions, or long hair, or anything of the like nature, to be uncomely or prejudicial to the common good, and the party offending reform not the same, upon notice given him, that then the next Assistant, being informed thereof, shall have power to bind the party so offending to answer it at the next Court, if the case so requires; provided, and it is the meaning of the Court, that men and women shall have liberty to wear out such apparel as they are now provided of, (except the immoderate great sleeves, slashed apparel, immoderate great veils, long wings, etc.)." What intolerable tyranny of private surveillance is indicated in the phrase, "what any man shall judge to be uncomely"!

Legislation against intoxicating drinks is a feature of Puritan law which connects it more immediately with the present time. In bringing this into discussion under the head of "Sumptuary Laws," we by no means assume that any and all legislation on this subject is sumptuary. To what degree it ever is so, we will presently consider. We certainly think that it *may* partake of this character. Our venerable forefathers evidently had no thought of the necessity of "total abstinence" in

order to suppress drunkenness. In the second letter of instructions (dated June, 1629) to Endicott and his Council, they are exhorted to prevent the sale of "strong waters" to the Indians, and to punish any of their own people who shall become drunk in the use of them. In the preamble to a law enacted in 1646, one is led to expect an enforcement of the modern principles of abstinence and prohibition; since, after declaring that "drunkenness is a vice to be abhorred of all nations, especially of those which hold out and profess the Gospel of Christ Jesus," it goes on to assert that "any strict laws against the sin will not prevail *unless the cause be taken away.*" But it would seem that "the cause," in the eyes of our Puritan lawmakers, was an indiscriminate sale of spirituous drinks; for the law chiefly enacts that none but "vintners" shall have permission to retail wine and "strong water." It is also permitted to constables to search any tavern, or even any private house, "suspected to sell wine contrary to this order." Moreover, no person is "to drink or tipple at unseasonable times in houses of entertainment,"—the "unseasonable" time being declared to be after nine in the evening.

But these laws were of small avail, for, in 1648, the Court is grieved to confess: "It is found by experience that a great quantity of wine is spent, and much thereof abused to excess of drinking and unto drunkenness itself, *notwithstanding all the wholesome laws* provided and published for the preventing thereof." It therefore orders, that those who are authorized to sell wine and beer shall not harbor a drunkard in their houses, but shall forthwith give him up to be dealt with by the proper officer, under penalty of five pounds for disobedience.

It would be tedious to enumerate the many futile attempts, found on the pages of the early records, to put a stop to drunkenness by legislation. One device after another was tried, but apparently on the principle which Macrobius gives as a reason for fresh sumptuary laws among the Romans: "*Exolescente metu* legis antiquioris." The punishments were not always limited to fines. In 1636 one "Peter Bussaker was censured for drunkenness to be whipped and to have twenty stripes sharply inflicted, and fined £5 for slighting the magistrates," etc. In March, 1634, it was ordered "that Robert Coles, for

drunkenness by him committed at Roxbury, shall be disfranchised, wear about his neck and so to hang upon his outward garment a D made of red cloth and set upon white; to continue this for a year, and not to leave it off at any time when he comes amongst company, under penalty of 40*s.* for the first offence and £5 for the second." What was the efficacy of the whipping or the "scarlet letter," we are not informed. That intemperance prevailed to an alarming extent, in spite of all fines and punishments imposed, is sufficiently evident from the frequency of this penal legislation and the various forms in which it was tried. Was this a vice, as suggested by a modern writer, to which the Puritans were especially addicted because it was *their only recreation?* If so, it is another illustration of the familiar proverb, "Naturam expellas furca, tamen usque recurret." Perhaps it may be found that we need not go back quite two centuries for such illustrations. Too many of our modern legislators and reformers also seem to forget that "nature" is not to be expelled by edict. And the mention of this brings us to the consideration of prohibition as the most recent panacea for the tremendous evil of intemperance.

The title of the pamphlet which we have put at the head of our article asserts the famous "Maine law" to be "a failure." We believe it to have failed because of the more or less distinct consciousness, on the part of the people, that it is essentially a sumptuary law, and therefore an unwarrantable interference with personal liberty. This has, indeed, been indignantly denied. The framers and advocates of this law, we are willing to believe, sincerely regard it as a measure of simple protection. The Report of the Committee to the Senate of Massachusetts, February 15, 1855, after affirming it to be "very generally admitted" that the use of intoxicating drinks as a beverage is injurious to the best interests of a community, goes on to say that the logical inference from this is, "that the community is authorized and obligated to employ all proper expedients for protecting itself against serious detriment from this source." Taken literally, this does not seem a very important or striking conclusion for the "logical inference" to conduct us to; for plainly the only question is, What *are* these

"proper expedients"? We are however informed, further on in the Report, that "moral suasion" has been discovered to be insufficient for the removal of the evil; and that the same is true of the punishment of drunkards and the enactment of license laws; but that at last (in 1852) 80,000 voters and nearly 200,000 citizens of Massachusetts demanded the enactment of a law "founded on the principle of entire prohibition, confiscation, and destruction"; and now (this Committee believes) the effectual and thorough remedy is found.

We do not propose to establish the proof, from Mr. Clark's pamphlet or elsewhere, that this sovereign remedy has failed to accomplish what its inventors expected during these ten years of its trial. We are concerned chiefly in pointing out its "sumptuary" features. It seems to us to come under this category, because it dictates to private individuals concerning their personal tastes and expenses. It does this virtually, though not in express terms. Mr. Mill * very properly says: "The state might just as well forbid him [the buyer and consumer] to *drink* wine, as purposely to make it *impossible* for him to obtain it." Indeed, it seems to us scarcely to admit of a doubt, that many of the advocates of this law, if allowed to pursue its "logical inference," would not hesitate to complete their purpose by making all *use* of intoxicating drinks (except as medicine and in the arts) criminal. That would unquestionably be more *thorough* than any previous legislation; and it would be perfectly consistent with the principle of prohibition; but one could hardly deny that this was sumptuary law. The right to eat and drink and wear what he shall think best for himself is surely one of the most obvious rights of a human being, qualified only by the demands of common honesty and decorum. Neither the community, through the expression of public opinion, nor the state, by the enactment of law, is authorized to take away that right. But has not the state, has not the community, a right to protect itself against the fearful consequences which intemperance draws in its train? And does not intemperance, though an individual sin in its origin, produce an incalculable amount of social misery?

* On Liberty, p. 160.

We answer both questions in the affirmative, and yet we emphatically deny that the state may resort (as is implied) to *those methods* of protection which are believed to be most efficient, that is, most expeditious. It might be the most efficient way of destroying heresy to put all the heretics to death; but the spirit of the age inclines to a somewhat humaner process. We might think to prevent all the dangers of "a little knowledge," by burning every book we could lay hands on; but a prejudice would still remain in favor of everybody's meeting these dangers for himself. The state may protect itself and its citizens against flagrant acts of violence, injustice, and disorder; but it may not therefore punish those private habits or indulgences which sometimes lead to violence. Drunkenness is a sin, but it is not a crime. The state has a right to punish a drunken man for assault, but not for his drunkenness. And this is no quibble, but a distinction of vital importance. Every man, because he is a member of some community, exerts an influence upon that community for good or evil, according to his peculiar endowments and opportunities; and in this sense no private act is without its public results. But what intolerable interference with personal and domestic freedom, should the officers of law assume to correct every departure from strict morality, — should they, in other words, treat every sin as a crime!

Mr. Mill, and William Von Humboldt* before him, have admirably shown how essential it is to all the great interests of humanity, that each man in the community should be left free by the state to develop his individual nature, wherever this development does not *directly* infringe upon the rights of others. That which is only *indirectly* injurious to other persons in a man's conduct is no proper object of legislative interference. Let this plain and intelligible principle once be violated, and we have no security against the most odious forms of search and espionage. Habitual blasphemy and profanity may imply a deeper degree of moral turpitude than stealing; yet we punish the last offence, because it is an immediate injury to society, while we affix no legal

* In a posthumous work entitled "The Sphere and Duties of Government."

penalties to the first, because it operates only indirectly and remotely to the public detriment. The state may allow a man to ruin himself by his vices; for it is far better he should have this liberty of determining what he thinks best for himself, than that the state should interpose in purely personal and private concerns. But though the state may not come between a man and the vicious habits he chooses to form, it by no means follows that he is to go down to destruction without an effort to save him. Domestic and friendly remonstrance, and the various motives which benevolent individuals or societies can bring to bear upon him, may still be effectively used. There is no danger that they will cease, while one spark of human love shall glow in a human breast; though there *is* danger (as experience has shown) that these efforts may be somewhat relaxed, when legislation rather than charity is deemed the great instrument of reform. But this mode, says the Legislative Committee of 1855, has been tried and found "insufficient" to remove this gigantic evil of intemperance. Does this mean anything more than that "moral suasion," so called, is a slow process? Insufficient it may have been to satisfy the impatience or the unreasonable expectations of certain reformers, but its work, though slower, we believe to have been far more secure and radical. We do not deny that legislation has *something* to do in aiding the efforts of those who are laboring to suppress intemperance. But we do deny that efforts in the direction of sumptuary law can produce anything but ultimate harm to the cause they aim to benefit. Such is the lesson of the past; and it is amply confirmed in more recent times. The true province of legislation is to remove all obstacles to the freest development of individual virtue; and where that is adhered to, it will be the direct personal interest of the citizen always to strive for the well-being and the security of the state.